

### **REMARKS**

A response to the Final Office Action issued on August 5, 2010 was filed on October 14, 2010. In response, the present Restriction Requirement was issued. Applicants wish to thank Examiner Calamita for her time and the telephone conferences conducted on November 24, 2010 and November 29, 2010 regarding the present Restriction Requirement and amendments conducive to arriving at patentable subject matter. Examiner Calamita confirmed that the finality of the Office Action issued on August 5, 2010 was withdrawn and prosecution has been reopened.

#### **Amendments to the Claims**

Claims 27, 28, 31 and 40-42 are currently pending with claims 27 being independent. Claims 29, 30, 32-39 and 43-48 are hereby canceled without prejudice to or disclaimer of the subject matter contained therein. Applicants reserve the right to pursue the subject matter of any withdrawn or canceled claim in one or more continuing applications. No new matter has been added.

#### **Claim Rejections – Double Patenting**

The lone remaining rejection in the Office Action issued on August 5, 2010 was a rejection of claims 27-31, 35, 36, 43, and 44 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 8-21 of U.S. Patent No. 6,274,552. A terminal disclaimer was filed with the response submitted October 14, 2010 rendering the rejection moot. The terminal disclaimer was approved on October 18, 2010. The Examiner notes that the amendment filed on October 14, 2010 has been entered. Accordingly, Applicants request the rejection be formally withdrawn.

#### **Election/Restrictions**

In addition to the election of species requirement issued on June 30, 2006 requiring the election of a specific combination of biological factors, the Examiner is now requiring an

election of species of targeting molecule from the group consisting of cancer cell specific antigen, polyclonal antibody, and monoclonal antibody. Applicants note the genus of targeting molecules includes more than these three species. See Claim 31. Therefore, it is unclear how the Examiner is treating the other species of targeting molecule including those listed in Claim 31. Applicants believe the election requirement should include all species of targeting molecule. Applicants are electing from one of the species presented by the Examiner, but as noted below, wish to have all species of targeting molecule rejoined upon allowance of a generic claim.

Applicants elect polyclonal antibody. The election reads on Claims 27, 28, 31 and 42. Applicants respectfully note they are entitled to consideration of additional species of targeting molecule upon allowance of a generic claim. Claims 27, 28 and 31 are generic to the elected species. Applicants further reserve the right to pursue any non-elected species in one or more continuing applications.

**Request for Rejoinder of Non-elected Species**

Upon allowance of a generic claim, Applicants requested rejoinder of non-elected species of cytokines and non-elected species of targeting molecule.

**No Waiver**

All of Applicants' arguments and amendments are without prejudice or disclaimer. Applicants submit that the independent claims are allowable over the documents of record, as discussed above. Applicants have not acquiesced to any such rejection and reserve the right to address the patentability of any additional claim features in the future.

**CONCLUSION**

Applicants submit the foregoing as a full and complete response to the Official Action dated November 5, 2010. Applicants submit that the amendments made herein and the remarks provided above do not present any new issues for review by the Examiner. If any issues exist that can be resolved with an Examiner's Amendment or a telephone conference, please contact Applicants' undersigned agent at 404.665.3099.

No additional fees are believed due, however the Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment of fees to Deposit Account Number 50-5193.

Respectfully submitted,

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